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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,419	11/09/2000	John M. Tomich	30917	5692

23589 7590 08/26/2003

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2405 GRAND BLVD., SUITE 400
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EXAMINER

MURPHY, JOSEPH F

ART UNIT	PAPER NUMBER
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1646

DATE MAILED: 08/26/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

09/710,419

TOMICH ET AL.

Examiner

Joseph F Murphy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48-72 is/are pending in the application.
- 4a) Of the above claim(s) 49-72 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 48 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 13.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Formal Matters

Claims 30-36 were canceled, and new claims 49-72 were added in Paper No. 12, 5/27/2003. Claims 48-72 are pending.

Election/Restrictions

Newly submitted claims 49-72 are directed to a non-elected invention that is independent or distinct from the invention originally elected and prosecuted for the reasons of record set forth in Paper No. 6, 3/15/2002 and made final in Paper No. 8, 6/17/2002, and for the following reasons: Applicant was granted and additional election of the Group drawn to a method of altering water flux across an epithelial cell by contacting the cell with an amino acid sequence as set forth in SEQ ID NO: 18 in Paper No. 10, 12/3/2002. Newly submitted claims 49-72 are drawn to methods of altering water flux across an epithelial cell by contacting the cell with an amino acid sequence as set forth in SEQ ID NOs: 9, 18, 19, 21, 26, 27, 28, 48, 50, 52, 53. The methods which are set forth in claims 49-72 are practiced using peptides which were previously not elected and prosecuted. The methods set forth in claims 49-72 differ from the method of claim 48 because the methods are practiced with materially different starting materials, i.e. the peptides of SEQ ID Nos: 9, 18, 19, 21, 26, 27, 28, 48, 50, 52, 53, which possess characteristic differences in structure and function from the peptide of SEQ ID NO: 18, as made of record previously.

Since applicant has elected SEQ ID NO: 18 and received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 49-72 are withdrawn from

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consideration as being directed to a non-elected invention. See 37 C.F.R. 1.142(b) and MPEP 821.03. Claim 48 is under consideration. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Conclusion

Claim 48 is allowable.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Advisory Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Murphy whose telephone number is 703-305-7245.


The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 703-308-6564. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Joseph F. Murphy, Ph. D.
Patent Examiner
Art Unit 1646
August 4, 2003



YVONNE EYLER, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600